Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
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PLR-115134-18

Date:
October 25, 2018

Legend
Taxpayer =
Plan =
Year 1 =
Year 2 =
Year 3 =
Year 4 =
Date 1 =
Date 2 =
Date 3 =
QSLOB 1 =
QSLOB 2 =
QSLOB 3 =

Dear

This is in response to a letter dated April 27, 2018, in which you request, through your authorized representative, an extension of time pursuant to § 301.9100-1 of the Procedure and Administration Regulations to file the notice of election described in Section 3 of Revenue Procedure 93-40, 1993-2 CB 535 ("Rev. Proc. 93-40") for QSLOB 3 to be treated as a qualified separate line of business ("QSLOB"), effective as of Date 2, under section 414(r)(2) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalties of perjury in support of Taxpayer's ruling request.

Taxpayer is the sponsor of the Plan, as well as the sponsor or affiliate of the sponsor of a number of other plans. Taxpayer is a domestic corporation, organized as a holding company, that owned directly or through subsidiaries, a controlling interest of varying sizes in subsidiaries. Before Year 1, Taxpayer elected qualified separate line of business treatment for QSLOB 1, effective on Date 1. With respect to the election that is the subject of this ruling request, Taxpayer was part of a controlled group that operated six QSLOBs, including QSLOB 1 and QSLOB 2. During Years 1 and 2, the membership of QSLOB 1 was materially modified due to changes in the Taxpayer's controlled group structure and demographics and as a result, the Plan was no longer able to satisfy the applicable non-discrimination requirements. The employee of Taxpayer who had supervisory responsibility for the Plan had no employee benefits expertise or experience and relied on external counsel for advice on various plan compliance matters. However, they did not advise him that he needed to make a timely QSLOB election to combine QSLOB 1 and QSLOB 2, forming QSLOB 3, as a result of those changes in the controlled group structure and demographics. Accordingly, Taxpayer requests a favorable ruling granting an extension of time pursuant to § 301.9100-1 to file a Form 5310-A QSLOB Notification with respect to QSLOB 3 effective on Date 2.

In general, section 414(r) provides that, for purposes of section 129(d)(8) and 410(b) an employer shall be treated as operating separate lines of business during any year if the employer operates separate lines of business for bona fide business reasons and satisfies certain other conditions under the Code. If the employer is treated as operating QSLOBs for the year, the employer may apply the minimum coverage requirements of section 410(b) (including the nondiscrimination requirements of section 401(a)(4) and the minimum participation requirements of section 401(a)(26)) separately with respect to the employees in each QSLOB.

Section 414(r)(2)(B) requires an employer to notify the Secretary of the Treasury if a line of business is being treated as separate for purposes of section 129(d)(8) and 410(b).

Section 3 of Rev. Proc. 93-40 sets forth the exclusive rules for satisfying the notice requirement of section 414(r)(2)(B). Section 3.03 of Rev. Proc. 93-40 provides that notice must be given by filing Form 5310-A. Section 3.05 of Rev. Proc. 93-40 provides that notice for a testing year must be given on or before the Notification Date for the testing year. The Notification Date for a testing year is the later of October 15 of the year following the testing year or the 15th day of the 10th month after the close of the plan year of the plan of the employer that begins earliest in the testing year. Section 3.06 of Rev. Proc. 93-40 provides that after the Notification Date, notice cannot be modified, withdrawn, or revoked, and will be treated as applying to subsequent testing years unless the employer takes timely action to provide a new notice.

Section 301.9100-1(a) states that the regulations under §§ 301.9100-1, 301.9100-2, and 301.9100-3 provide the standards the Internal Revenue Service (IRS) will use to determine whether to grant an extension of time to make a regulatory election. It further

provides that the granting of an extension of time is not a determination that the taxpayer is otherwise eligible to make the election.

Section 301.9100-1(b) defines a "regulatory election" to mean an election whose due date is prescribed by a regulation, revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin. Notice that an employer elects to be treated as operating qualified separate lines of business pursuant to section 414(r) and section 3 of Rev. Proc. 93-40 constitutes a regulatory election.

Section 301.9100-1(c) provides that the IRS, in its discretion, may grant a reasonable extension of time under the rules of §§ 301.9100-2 and 301.9100-3 to make a regulatory election.

Section 301.9100-2 lists certain elections for which automatic extensions of time to file are granted. Section 301.9100-3 generally provides guidance with respect to the granting of relief with respect to those elections not referenced in § 301.9100-2. The relief requested by Taxpayer is not referenced in § 301.9100-2.

Section 301.9100-3(a) provides that applications for relief that fall within § 301.9100-3 will be granted when the taxpayer provides sufficient evidence (including affidavits described in § 301.9100-3(e)(2)) to establish that (1) the taxpayer acted reasonably and in good faith, and (2) granting relief would not prejudice the interest of the Government.

Section 301.9100-3(b)(1) provides that a taxpayer will be deemed to have acted reasonably and in good faith if (i) the taxpayer's request for relief under this section is filed before the failure to make a timely election is discovered by the IRS; (ii) the taxpayer inadvertently failed to make the election because of intervening events beyond the taxpayer's control; (iii) the taxpayer failed to make the election because, after exercising reasonable diligence, the taxpayer was unaware of the necessity for the election; (iv) the taxpayer reasonably relied upon the written advice of the IRS; or (v) the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Section 301.9100-3(c)(ii) provides that ordinarily the interests of the Government will be treated as prejudiced and that ordinarily the IRS will not grant relief when tax years that would have been affected by the election had it been timely made are closed by the statute of limitations before the taxpayer's receipt of a ruling granting relief under this section.

Taxpayer requested relief before the IRS discovered the failure to make the election for Year 2. Thus, Taxpayer satisfies clause (i) of § 301.9100-3(b)(1). Taxpayer represents that it reasonably relied on a qualified tax professional and the tax professional failed to make or advise Taxpayer to make the election. Taxpayer's representative was not experienced in employee benefits and engaged external counsel to advise Taxpayer

with respect to plan compliance with the requirements of the Code. The employee of Taxpayer with supervisory responsibility for the Plan represents that external counsel did not advise him of the necessity to timely make the election. Thus, Taxpayer also satisfies clause (v) of § 301.9100-3(b)(1). However, upon discovery of the problem, he took prompt action to ensure that the Plan continued to comply with the non-discrimination requirements. In addition, as the statute of limitations is still open with respect to Year 2, the interests of the government would not be prejudiced by providing relief.

Accordingly, Taxpayer is granted an extension of 60 days from the date of issuance of this ruling to file notification of the QSLOB election for QSLOB 3 on Form 5310-A, effective on Date 2, with the appropriate office of the IRS.

No opinion is expressed as to whether the separate lines of business of the taxpayer satisfy the requirements under section 414(r).

This ruling does not constitute a determination that a separate line of business satisfies the requirement of administrative scrutiny within the meaning of § 1.414(r)-6 of the Income Tax Regulations.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party, as specified in Rev. Proc. 2018-1, 2018-1 IRB 1, section 7.01(16)(b). This office had not verified any of the material submitted in support of the request for ruling, and such material is subject to verification on examination. The Associate office will revoke or modify a letter ruling and apply the revocation retroactively if there had been a misstatement or omission of controlling facts; the facts at the time of the transaction are materially different from the controlling facts on which the ruling is based; or in the case of a transaction involving a continuing action or series of actions, the controlling facts change during the course of the transaction. See Rev. Proc. 2018-1, section 11.05.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Keith R. Kost
Senior Technician Reviewer
Qualified Plans Branch 2
Office of Associate Chief Counsel
(Tax Exempt and Government Entities)